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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,181	08/06/2001	Eric Teller	1148/039	1717
23861	7590	12/30/2005	EXAMINER	
METZ LEWIS, LLC 11 STANWIX STREET 18TH FLOOR PITTSBURGH, PA 15222			ASTORINO, MICHAEL C	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/923,181	<b>Applicant(s)</b> TELLER ET AL.	
	<b>Examiner</b> Michael C. Astorino	<b>Art Unit</b> 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 15-17, 32-44, 64-76, 97-108 and 137-140 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-8, 15-17, 32-44, 64-76 and 137-139 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 97-108 and 140 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>see attached</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The examiner acknowledges the amendment filed September 16, 2005.

#### ***Election/Restrictions***

Claim 97 is drawn to non-elected species II of the Election of Species, dated October 24, 2002. Invention II is drawn to a physiological monitoring system having means for annual input, monitoring predetermined routines and feedback to the individual. As amended claim 97, claims comprise in part, "...graphical utility graphically displaying..." line 18 of page 20. As such, claims 97 –108 and 140 have been withdrawn, and are not being examined in this office action.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8, 15-16, 33-40, 42-44, 65-72, 74-76, and 137-139 are rejected under 35

U.S.C. 102(e) as being anticipated by Mault US Patent Number 6,478,736. (cited by applicant)

Claim 1. An apparatus for detecting, monitoring and reporting human status information, comprising:

at least two sensors selected from the group consisting of physiological and contextual sensors, said sensors generating data indicative of a first parameter and a second parameter of an

individual; *(Mault teaches the use of a physiological sensor via a calorimeter 52 where the first parameter is the RMR which is used to calculate the number calories burned "3101" see figure 8B, and a contextual sensor via the PDA 52, the data entry buttons 56 which includes the data entered regarding the foods eaten or figure 8B, illustrated as calories eaten "1549")*

a processor in electronic communication with said at least two sensors *(Mault teaches the use of a PDA which is a processor)*, said processor generating

(a) derived data based on said data indicative of a first parameter and a second parameter, said derived data comprising a third parameter of said individual *(the third parameter is the subtraction of calories burned from calories eaten which comes out with a balance of -1552)*

(b) analytical status data from at least a portion of at least one of

(i) said data indicative of a first parameter,

(ii) said data indicative of a second parameter, *(Mault discloses the providing vitamin and mineral data for the foods consumed, see also figure 8C)* and

(iii) said derived data; and

means for transmitting to said individual at least one of said data indicative of a first parameter and a second parameter, said derived data and said analytical status data. *(display 54)*

In regards to claims 2-5, and 137 the use of Bluetooth wireless communication between the calorimeter worn on the user and the PDA, (see column 6, lines 1-30 and figure 1).

Bluetooth wireless protocol requires the use of a Bluetooth transceiver and it is bi-directional.

Additionally, Mault discloses that the integrated calorie management system is capable of having

a Bluetooth transceiver for at least the activity sensor while receiving data from the calorimeter (see figure 13). The Bluetooth transceiver and its respective protocol is bi-directional.

In regards to claims 6 and 7, the display 54 is in electronic communication with the processor.

In regards to claim 8, the means for transmitting also including the Bluetooth transceiver transmitting bi-directional between the calorimeter and the PDA. Also the

In regards to claim 15, the display is a visual output device.

In regards to claim 16, Mault states the use of a PDA and a wireless phone are substitutable (column 6, lines 1-20) and a wireless phone inherently has a speaker/ audible output device.

In regards to claims 33-44, 65-76, and 138-139 they are rejected on substantially the same rationale as 1-8, 15-16 and 137 as stated above.

Additionally, in another embodiment in regards to claims 33, 43, 65 and 75, the examiner views a different embodiment of the claimed invention, particularly figure 5 of Mault, the wired embodiment of the device. In this manner the sensor device includes the data entry buttons 56 of PDA 52 and the calorimeter 10. The remaining limitations of the claims are rejected on the same rationale as claim 1. Moreover, in regards to claims 37, 69, and 138-139, the PDA is disclosed as capable of having a Bluetooth transceiver for at least the activity sensor while receiving data from the calorimeter (see figure 13). The Bluetooth transceiver and its respective wireless protocol is bi-directional. In regards to claims 39-40 and 71-72, see rejection of claims 15 and 16, (column 6, lines 1-20). In regards to claims 42 and 74, see the display 54.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17, 41 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mault US Patent Number 6,478,736 B1 (cited by applicant) in view of Phipps US Patent Number 6,579,231 B1.

Mault states the computing device maybe a wireless phone/pager/PDA but does not disclose a tactile output device (column 6, lines 1-20). However, Phipps discloses a system in the same art where the wireless phone/pager has a vibrating mechanism (column 4, lines 1-5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify wireless phone of Mault in view of vibrating mechanism of the wireless phone in Phipps, since Phipps states the device may also include a beeper and a vibration mechanism 64, as is standard in paging devices. (Column 6, lines 33-37)

***Response to Arguments***

Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Astorino whose telephone number is 571-272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3736

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA

December 23, 2005

  
ALI IMAM  
PRIMARY EXAMINER  
*for Max*